

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

RULES OF PRACTICE AND PROCEDURE

PETITION OF UNITED STATES POSTAL SERVICE
TO INITIATE RULEMAKING
(April 10, 1995)

The United States Postal Service and its Governors believe strongly as a matter of policy that the current statutory and regulatory framework for changing postal rates and classifications needs to be more responsive to the business needs and public responsibilities of the Postal Service. We are firmly committed to seeking ways to make ratemaking more flexible and more effective in an increasingly competitive environment, either by employing the existing ratemaking scheme more productively, or, where necessary, by pursuing legislative change. It was with these objectives in mind, that the Board of Governors of the Postal Service in 1991 commissioned the Institute of Public Administration (IPA) to assess the ratemaking process and to recommend improvement. The IPA's report contained many useful insights and promising ideas, most of which have continued vitality.¹ The IPA's report, furthermore,

¹Institute of Public Administration, *Report to the Board of Governors of the United States Postal Service: The Ratemaking Process for the United States Postal Service* (October 1991).

led directly to the creation of the Joint Task Force on Postal Ratemaking and the issuance of its report in 1992.²

With regard to the structure of ratemaking procedures, the Joint Task Force's report had essentially a dual focus: 1) reforms associated with general (omnibus) rate changes; and 2) reforms associated with the need for more flexibility and expedition in several categories, including minor rate and classification changes, changes for competitive services, establishing new products and services, market tests and experiments, negotiated agreements, and some form of volume-based rates.

Up to this point, the pursuit of substantive and procedural reform has centered on the Joint Task Force's recommendations.³ In proceedings before the Postal Rate Commission, these efforts have focused on ideas for developing a new framework for the first type of reforms -- general postal rate changes. On August 28, 1992, the Commission published a notice of proposed rules that would have created a structured regime for biennial rate cases on a four-year cycle.⁴ On October 13, 1992, the Postal Service filed comments concluding that on balance it could not support the so-called

²*Postal Ratemaking in a Time of Change: A Report by the Joint Task Force on Postal Ratemaking* (June 1, 1992).

³In addition, in March of 1992, the General Accounting Office produced a critical evaluation of the need to employ demand pricing considerations to a greater extent in postal ratemaking. GAO, *Pricing Postal Services in a Competitive Environment*, GAO/GGD-92-49 (March 1992).

⁴Notice of Proposed Rulemaking, Docket No. RM91-1, Fed. Reg. 39160-73 (Aug. 28, 1992)(hereinafter, "Notice").

“two-by-four” proposal.⁵ By order dated March 19, 1993, the Commission withdrew that feature of its proposed rules.⁶

The assessment of the Board of Governors was that the two-by-four proposal limited flexibility and constrained postal management policies. The Governors and the Postal Service, however, are keenly interested in improving approaches to general rate changes. To that end, postal management is currently reviewing various approaches to omnibus rate changes. This would include the exploration of alternatives to guide the timing and content of rate proceedings.

The Governors and postal management, furthermore, believe that the second type of reforms has not been fully addressed by the efforts to date. In particular, the report of the Joint Task Force recommended procedural reforms to promote innovation and the ability to respond effectively to market changes, as well as to facilitate ratemaking for competitive services. In this regard, the Governors and the Postal Service share the general views of the Joint Task Force. The changing landscape of postal business calls for fresh and more flexible approaches to the ratemaking partnership.

The Postal Service and the Governors are guardedly optimistic about the potential for procedural flexibility and effectiveness within the existing statutory framework. They recognize, however, that critical improvements may require a quicker

⁵Comments of the United States Postal Service in Response to Notice of Proposed Rulemaking, Docket No. RM91-1 (October 13, 1992).

⁶Order Withdrawing Proposed Rules and Soliciting Further Comments, Order No. 968, Docket No. RM91-1 (March 19, 1993).

and more efficient approach through direct legislative change, or an explicit clarification that flexibilities already exist in the current law. Existing Commission and judicial precedent present impediments to accommodating many promising ideas for carrying out the Joint Task Force's recommendations. Certain fundamental changes in the law seem advisable in any event, particularly in basic structural matters, and in substantive areas that have been the most controversial in the past.

For example, the Postal Service believes that market realities and its general authority under the Postal Reorganization Act militate strongly in favor of enabling it to counter, in some effective way, its competitors' ability to contract individually with customers and to design competitive, particularized rate schedules based on pertinent cost and demand factors. In this regard, even with proposed administrative procedures that are more liberal, it will be necessary to assess critically whether they would allow the Postal Service to employ contract rates and volume discounts in ways that enable effective competition.⁷

⁷We note that the Joint Task Force addressed the question of whether more favorable rates could be offered for large volume users largely as a substantive, rather than a procedural issue. Report at 43-44. The Task Force believed that the concept of incorporating declining block rates in pertinent rate structures could provide needed rate flexibility. It also suggested that declining block rates could be combined with a rate band procedure to give the Postal Service the capability to adjust quickly to changing market conditions.

The Postal Service believes that declining block rates are worthy of serious consideration and future action. The feasibility of the concept as a matter of rate design for any particular category of mail, however, as well as the most appropriate procedural mechanism to apply, have not yet been determined. Several of the procedural mechanisms proposed here might well serve as vehicles for implementing volume discounting, including a rate band procedure, rules for the establishment of provisional services, market tests or experiments, or negotiated service agreements.

More flexible procedures for engaging in effective market testing of rates, classifications, and services need to be created. The existing Commission rules for experimental changes have limited utility. The Joint Task Force's commentary and recommendations, moreover, seem to recognize that trial and error of existing procedural mechanisms may not be the most efficient and effective way to meet the challenges of the modern competitive environment. Accordingly, the Postal Service and the Governors believe that pursuing new procedures could be fruitful.

We are therefore requesting the Commission to reopen the dialogue over administrative reform to a new chapter, and to focus on procedural changes designed to provide more expedition and flexibility. Earlier pleadings filed by the Postal Service in Docket No. RM91-1 made clear that we have from the beginning believed that such attention should be paid to the Task Force recommendations emphasizing competitive mechanisms and innovation.⁸ The Commission itself has announced its intention to pursue these matters.⁹

We approach this undertaking realizing fully that we are about to enter a very busy time at the Commission. We also realize there may never be an ideal time to tackle this type of procedural reform. It would be a mistake, however, to wait further to discover what opportunities might exist to capitalize on the remaining recommendations of the Joint Task Force Report. Accordingly, the Postal Service and the Governors ask

⁸Comments of the United States Postal Service in Response to Order No. 926, Docket No. RM91-1 (June 24, 1992); Comments of the United States Postal Service in Response to Notice of Proposed Rulemaking, Docket No. RM91-1 (Oct. 13, 1992).

⁹Order No. 968, *supra.*, at 5-6.

the Commission to open a rulemaking docket to consider the revisions described below.

We have outlined mechanisms intended to provide expedited consideration and review of several categories of Postal Service rate and classification proposals. Each of these is geared to a need, or to an area of potential improvement, that was contemplated by the Joint Task Force. We have briefly described below the intended purpose and scope of each mechanism, and we have appended proposed language for the rules. We expect that, in the course of this rulemaking, commentary will be elicited that will explore in more detail the pros and cons of the approaches outlined here.

In summary, to fill its historic mandate, the Postal Service believes it is imperative that we move forward with regulatory change to accommodate the ever changing needs of our business customers and the American public. Improvements in the regulatory framework governing the Postal Service are essential, and require immediate and critical attention.

PROPOSALS

Rules for Limited Scope Rate Cases. The Joint Task Force Report acknowledged that circumstances could arise that call for limited adjustments to rates outside of the context of a general rate change proceeding. The Report stated:

For example, a year or more experience with a new mail preparation discount might reveal it to be much more or less attractive than expected. Operational developments might dramatically change cost patterns. Market shifts might drastically alter the balance between service alternatives. A

responsive rate process needs to be flexible enough to adapt.

Report at 37. The Task Force therefore recommended that procedures be established for “processing separate but narrowly tailored rate cases.” *Id.*

The proposed rules create a procedure that would make possible expedited, limited changes in rates between general rate cases. The rules are intended to permit reliance, to the greatest extent possible, on evidence, documentation, and findings from the most recent general rate case, and to limit the inquiry to areas pertaining to the limited nature of the change and the effects on revenues and costs. A recommended decision would be issued within 60 days if the request is unchallenged, or 90 days if challenged.

Rules Establishing Rate Bands for Competitive Services in General Rate Cases.

The Task Force conceded that the existing ratemaking process could be adapted to allow the Postal Service to compete more effectively in markets characterized by direct competition. The Report stated:

The Service's competitive products are handicapped by the current ratesetting procedures which were established when markets for these products changed much more slowly or, in some cases, were less developed or important than they now are. The Commission's recommendations in an omnibus rate case are frequently based on record data which may be up to a year and a half out of date. Even the expedited procedure now in effect for Express Mail allows three months for the Commission to act. In addition, the Service must spend at least two months preparing its filing with the Commission and about a month to respond to the Commission's recommended decision. In six months' time, the market may well have changed substantially, rendering even the new rate obsolete.

Report at 41.

The Commission, in its earlier rulemaking effort, Docket No. RM91-1, agreed with the thrust of this comment, and attempted to construct a rule to accommodate the concept of changes within a recommended range, or band, of rates.¹⁰ The Commission's approach did not design separate procedures for rate changes by the Postal Service within pre-established bands. It created instead the framework for the establishment of bands in a regular 39 U.S.C. § 3622 proceeding, accompanied by a "Statement of General Policy Regarding Competitive Categories and Band Rates." Notice at 70-78. The Commission's Notice expressed the conclusion that changes within a band would comply with the Act if the Commission had previously recommended the band (Notice at 75). The proposed "Statement" referred to a written notice procedure, whereby the Postal Service could change rates "without the need for a new rate filing." (Notice at 73).

Here, the Postal Service proposal adopts the framework of establishing a range within a general rate proceeding, but recommends an alternative procedure involving a separate, very abbreviated proceeding to accomplish the change within a pre-approved band. The Postal Service's proposed rules create a mechanism in general rate cases for establishing, for competitive services, (1) a band of rates based on a range of markups over attributable costs, and (2) an aggregate institutional cost contribution for each product or service classified as "competitive." The band and contribution would

¹⁰Notice, at 16-19, 28, 70-78, 57.

serve as criteria for recommending rates in each general rate case, and for changing rates within the bands between general rate cases. Provisions within the DMCS would identify certain categories of mail as eligible to benefit from rate band flexibility. Between general rate cases, the Postal Service would submit to the Commission a request for a recommended decision on whether to adjust prices within the preestablished bands. Findings in the preceding rate case that established the bands would not be relitigated. The Commission would issue the recommended decision within 30 days if the request is unchallenged, or 60 days if challenged.

We note that the Commission's earlier rulemaking created a separate rule providing guidance for the designation of particular mail categories as competitive, and therefore eligible for rate band treatment. Notice at 70-71. The Postal Service proposal here only refers to such pre-approval by identification in the DMCS. No separate rule is recommended for either procedure or criteria to establish competitive status. In this regard, the Postal Service believes that a classification proceeding under existing rules would be adequate to create the necessary DMCS provision to implement the rate band mechanism.

Rules for Expedited Minor Classification Cases. The Joint Task Force recognized a category of limited-scope classification change proposals that do not necessarily warrant full treatment under the Commission's classification change rules. Accordingly, the Task Force recommended "that the Commission provide a streamlined version of its rules for a separate, expedited classification track for handling

appropriately limited proposals.” Report at 55. As contemplated by the Task Force, examples of such changes would include “changes in mailing requirements, eligibility standards, and categories of service with low aggregate costs and revenues.” *Id.*

The Postal Service's proposed rules here would similarly apply only to narrowly focused, limited changes. They would require significantly less data and other information in the initial filing than the rules applicable to more complex classification cases. Findings from the last omnibus rate case would not be relitigated, and inquiry would be restricted to the limited nature of the change and the effects on revenues and costs. The Commission would issue a recommended decision within 60 days if the request is unchallenged, or 90 days if challenged. The rules contemplate simplified procedures consistent with expedition.

Rules for Market Tests. The Joint Task Force candidly acknowledged limitations in the existing mechanisms available for experiments and market tests. The Report stated:

A broadly recognized deficiency is the lack of a “well-worn path” for obtaining information on potential service innovations through limited trials with actual postal customers....While the Postal Rate Commission has adjusted rules for mail classification proposals involving experimental changes, the level of preparation and justification required can involve the delay of an experimental offering by as much as a year. Extensive use of these rules for testing of potential new services has not, in fact, occurred.

Report at 47-48. The Report outlined the elements of an improved procedure. Report at 48-50.

The Postal Service's proposed procedures here attempt to track those elements. The rules would allow consideration of proposals to obtain data from actual market testing of mail classification or rate changes in order to improve the information available to evaluate the proposed change. The rules would include a limitation on the scope, scale, and duration of the test. Initially, only information available to support the experimental proposal and a description of the test and the plan for collecting the necessary additional data would need to be filed. The rigorous rules which ordinarily govern "introduction and reliance upon studies and analyses" (see rule 3001.31(k)) would not apply at this initial stage. Information obtained from the test could be considered in a later portion of the proceeding to determine whether the change should be made permanent. The scope of the inquiry in the initial phase would be limited to issues of general legality, the design and necessity of the test, and the nature of any adverse effect on competitors or discrimination among mailers. The Commission would issue a recommended decision either approving or not approving the test within 60 days. To facilitate expedition, the Commission would either recommend or not recommend the service as proposed, without presenting modifications. The Commission could, of course, suggest modifications, which the Postal Service could incorporate in a new request. The rules would embody a presumption in favor of innovation.

Rules for Provisional Services. The Joint Task Force identified a role for specialized procedures to facilitate the introduction of new services. The Task Force

further specified a special, provisional status for new services considered under these procedures. In other words, the services would be approved initially for only a limited period of time, and subsequent review would be expected. This provisional status would justify an expedited, more limited degree of review of the Postal Service's proposals than under existing rules for rate and classification changes. Although it did not offer examples, the Task Force Report stated:

The only types of innovations covered would be those which supplement existing classifications without altering any of them, so that customers could either try the new service or stick with the existing service menu, or both.

Report at 52.

The Postal Service here has proposed a mechanism designed to implement the Task Force's concept of new services with provisional status. The proposed rules would allow for fast-track consideration of proposals to introduce a new service. In accordance with the above description, the rules would apply only to proposals which supplement existing rates and classifications without changing any of them, allowing customers a choice of existing services or the new, provisional service. Although the service could affect future overall revenue requirements, it would not be tied to the rates for any existing class or category. The scope of the inquiry would be limited to whether the proposal would have a material adverse effect on revenue or costs, or pose unnecessary or unreasonable harm for competitors. Only information available to support the limited initial inquiry would need to be provided at the time of filing. Additional information could be provided later, after the Postal Service gained

experience with the service, if it determined that it wished to continue the proceeding in order to seek to make the service permanent. The Commission would issue a recommended decision either approving or not approving the provisional service within 90 days. Because of the limited time, the Commission's recommended decision would either recommend or not recommend the service as proposed. The Commission could, of course, suggest modifications, which the Postal Service could incorporate in a new request. The rules contemplate that, in the absence of a showing of adverse effect or unreasonable harm to competitors, the Commission would recommend the provisional service.

Rules for Multi-Year Test Periods for New Services. The Joint Task Force acknowledged that certain new services are faced with special challenges. The Report stated:

In practice, opportunities for new service innovation are restricted by the single-year test period, which has typically been used in establishing postage rates. Sometimes a new service can entail substantial initial expenditures for equipment, marketing, or other introductory investments. It cannot generate sufficient volumes to cover those expenditures in its first year or two as customers first are made aware of the service and begin to react to it. If the service is successful, volume growth should increase cost coverage. But development of a mature service may take several years.

Report at 50. Accordingly, the Task Force recommended that specialized rules be created which would accommodate the need for a longer test period than currently afforded by the current fiscal year test period rule.

The Postal Service's proposed rules here would authorize the use of multi-year test periods for potential new services that are not expected to generate sufficient volumes and revenues to cover costs in their first year or two, but which the Postal Service expects to mature over time to produce an appropriate contribution to institutional costs. Currently the Commission recommends rates based on a comparison of costs and revenues over a one-year period soon after the implementation of a new service. The proposed rules would encourage innovation by examining costs and revenues for a new service over a multi-year period. Otherwise, prices set high enough to cover initial costs before representative volumes are generated could unnecessarily doom a promising new service, resulting in the loss of the net contribution that the service might produce later.

Proposals Applicable to Negotiated Service Agreements. Although not explicitly addressing the issue of contract rates and classifications, the Task Force acknowledged the potential utility of a mechanism to review and approve service agreements with particular customers that could be extended to other qualifying parties. The Report stated:

The Task Force believes that the rate and classification process should have a means to accommodate service agreements with postal customers, varying from the general rate and classification schedules in ways which add value both for the customer and for the postal system as a whole. In specific situations involving one customer or a limited group of customers, negotiated agreements tailored to the particular circumstances might be more effective than the broad schedules in meeting what the particular facts require, so that the benefits can be shared between the participating customer and the postal system.

Report at 54. The Report then outlined criteria and the elements of a possible procedure for implementing this concept.

The Postal Service's proposed rules here contemplate authorization to negotiate agreements with mailers, in which the Postal Service would agree to provide mail services not currently included within the Domestic Mail Classification Schedule (DMCS), at rates which would be both attractive to the mailer and beneficial to the Postal Service. Implementing this proposal would involve two related steps _ introducing DMCS language that would enable the Postal Service to provide service in the context of a Negotiated Service Agreement (NSA), and establishing procedural rules to govern the actions undertaken by the Commission to allow such agreements to be placed into effect. Under the proposed DMCS provisions, only mailers who meet specified standards, and who would be willing to submit mailings within closely defined parameters, would be eligible to enter NSAs. The rate negotiated must contribute a reasonable amount towards the recovery of institutional costs, with a minimum markup level identified as presumptively reasonable. Similarly situated mailers would be able to apply to receive the same service at the same rate. The procedural rules would require the Postal Service to file, in addition to the text of the agreement negotiated, only such material as is necessary to demonstrate that the NSA would be beneficial to the Postal Service. The Commission would either approve or reject the tentative NSA as submitted. Furthermore, when the effective markup equals or exceeds the percentage amount previously specified as reasonable in the DMCS, the Commission can

avoid further debate as to whether that markup is appropriate. The Commission would issue a recommendation within 60 days of the filing of the Request.

CONCLUSION

For the foregoing reasons, the Postal Service respectfully requests that the Commission initiate a rulemaking proceeding to consider the above and the attached proposed rules.

Respectfully submitted,

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PROPOSED RULES

Add the following sections to Subpart B Rules Applicable to Requests for Changes in Rates and Fees:

§ 3001.58 **Limited Scope Rate Cases _ Applicability.**

This section applies to cases in which the Postal Service requests an expedited recommended decision on relatively minor adjustments to rate schedules established in the preceding general rate case.

- (a) A change in a rate or fee may be determined to be limited in scope if it is based on one or more of the following reasons:
 - (1) There is a change in projected volumes of the affected mail type or service from the volumes estimated in the preceding general rate case.
 - (2) There is a change in estimates of any other factor affecting revenues for the affected mail type or service (e.g., billing determinants) from estimates in the preceding general rate case.
 - (3) There is a change in operations (e.g., pattern of mail flow) which significantly alters the cost basis for the affected rate or fee, as estimated in the preceding general rate case.
 - (4) There is a change in the relationship between the affected rate category or service and another rate category or service which significantly affects the basis for the affected rate or fee as estimated in the preceding general rate case.

For purposes of evaluating these reasons, the base time period for comparison will be identical to the test period for estimating costs, volumes, and revenues in the preceding general rate case.

- (b) To be considered limited, a proposed change in a rate or fee must not involve or cause the following:
 - (1) a change in methodologies for estimating costs, volumes, and revenues from those approved by the Commission in the most recent recommended decision in a general rate case;

- (2) a significant change in mail classification; or
- (3) a significant change in rates, fees, or projected revenues for the affected mail types or services. Factors to be considered in determining whether a rate or revenue change will be minor shall include: (i) the percentage change in rates for the affected mail types or services; (ii) the relationship of the resulting cost coverages for affected classes, subclasses, or services to those recommended by the Commission in the preceding general rate case; and (iii) the change in estimated revenues of affected classes, subclasses, or services compared to the total revenues estimated in the preceding general rate case.

§ 3001.58a Limited Scope Rate Cases _ Filing of formal requests and prepared direct evidence.

- (a) *General.* Requests and written direct testimony under this section shall be filed by the Postal Service in accordance with this section and §§ 3001.9 to 3001.11, 3001.31(a) to (j). Each request shall include information and data sufficient to explain fully the proposed change, to demonstrate conformance with the requirements for a limited change (§§ 3001.58(a) and (b)), and to comply with the content requirements of this section.
- (b) *Specific requirements for data and information applicable to limited rate changes.* For the information and data required for changes in rates and fees (§§ 3001.54(c) through (q)), the findings (and the record support for them) in the Commission recommended decision in the preceding general rate case shall be incorporated into the record. The Postal Service shall submit data and information amending or supplementing these findings and record support in order to demonstrate compliance with the conditions in this section for requesting a limited rate change (§§ 3001.58(a)(1) - (4) and §§ 3001.58(b)(1) - (3)).
- (c) *Effects of proposed changes.* Every formal request shall include a statement showing the effects of the proposed changes upon:
 - (1) the total net revenues of the Postal Service;
 - (2) the attributable costs of those classes, subclasses, and services affected by the proposed changes; and

- (3) the revenues of those classes, subclasses, and services affected by the proposed changes.

§ 3001.58b Limited Scope Rate Cases _ Procedural guidelines.

- (a) Within 5 days of receipt of the request, the Commission shall issue a notice of proceeding and permit intervention pursuant to applicable rules (§§ 3001.17 and 3001.20). The Commission will conduct an inquiry on the record before issuing a recommended decision. In no event will a recommended decision be issued more than 90 days after filing of the Postal Service's request.
- (b) Within 30 days of the filing of the Postal Service's request, any party challenging compliance with this section shall state with specificity the facts set forth in the Postal Service's filing that the party disputes and the detailed reasons for the party's conclusions. No issue not related to the conditions for a limited rate change or its effects, and no findings from the recommended decision in the preceding general rate case upon which the Postal Service's filing relies shall be subject to challenge.
- (c) If no party challenges the Postal Service's request within 30 days of the filing of the request, the Commission will issue its recommended decision within 60 days from the date of the request.

§ 3001.59a Rate Bands for Competitive Services _ Guidelines for establishing bands of rates.

- (a) In every general rate case, the Commission shall recommend for each competitive class or subclass defining a product or service (1) a cost coverage representing a reasonable minimum markup over attributable costs and a cost coverage representing a reasonable maximum markup over attributable costs; and (2) rates based on the lower and upper markups. The range of possible rates between the upper and lower bounds, inclusive, shall constitute the rate band for each competitive service.
- (b) The Commission shall also recommend for each competitive category (1) rates which fall within the band established in accordance with (a) of this subsection, and (2) based on those rates, an amount for the relevant test period constituting that product or service's contribution to institutional costs.

§ 3001.59b Rate Bands for Competitive Services _ Proceedings to change rates within rate bands.

- (a) After a rate band for a competitive product or service has been established in a general rate case under this section, the Postal Service may file a request for a recommended decision for a rate change within that band. Within 5 days of receipt of the request, the Commission shall issue a notice of proceeding and permit intervention pursuant to applicable rules (§§ 3001.17 and 3001.20).
- (b) Every request for a recommended decision under this subsection shall include data and information (1) demonstrating that proposed rates are between the upper and lower bounds established in accordance with § 3001.59a(a)(2), (2) demonstrating that proposed rates produce the contribution to institutional costs estimated in accordance with § 3001.59a(b)(2), or tend to minimize reductions in that contribution or to increase that contribution, and (3) explaining why the proposed change is reasonable and will be beneficial.
- (c) The Commission shall issue a recommended decision either recommending that the proposed rate change be placed into effect as submitted, or recommending that the proposed rate change not be placed into effect as submitted.
- (d) The Commission shall conduct an inquiry on the record which is limited to matters enumerated in (b) of this subsection.
 - (1) If no request for a hearing is received within 10 days after publication of the notice in the Federal Register, the Commission shall issue its recommended decision within 30 days. The Commission may base its decision on the information furnished with the request, or may request additional material.
 - (2) If a timely request for a hearing is filed, the Commission shall conduct a hearing and issue a recommended decision within 60 days of the filing of the request.

Add the following sections to Subpart C Rules Applicable to Requests for Establishing or Changing the Mail Classification Schedule:

§ 3001.69 Expedited Minor Classification Cases _ Applicability

This section applies to cases in which the Postal Service requests expeditious review of minor classification changes. A classification change may be considered minor if it does not involve changes to rates or fees and (a) involves only changes in requirements or eligibility standards for mail classes or services, (b) pertains to proposed or existing types of mail or services estimated to provide less than 10 percent of total Postal Service revenues, or (c) otherwise is found by the Commission to be appropriately limited.

§ 3001.69a Expedited Minor Classification Cases _ Filing of formal requests and prepared direct evidence.

- (a) *General.* Requests and written direct testimony under this section shall be filed by the Postal Service in accordance with this section and §§ 3001.9 to 3000.11, §§ 3001.31(a) to (j). Each request shall demonstrate conformance with the requirements for a limited change (§ 3001.69).
- (b) *Requirements for data and information applicable to minor classification changes.*
 - (1) Every formal request shall include copies of relevant portions of the then-effective Domestic Mail Classification Schedule and the proposed changes therein in legislative format.
 - (2) Every formal request shall include an explanation of why the proposed changes to the Domestic Mail Classification Schedule are in accordance with the policies and the applicable criteria of the Act, as well as the available information and data that support this explanation.

§ 3001.69b Expedited Minor Classification Cases _ Procedural guidelines.

- (a) Within 5 days of receipt of the request, the Commission shall issue a notice of proceeding and permit intervention pursuant to applicable rules (§§ 3001.17 and 3001.20). The Commission will conduct an inquiry on the record before issuing

a recommended decision. In no event will a recommended decision be issued more than 90 days after filing of the Postal Service's request.

- (b) Within 30 days of the filing of the Postal Service's request, any party challenging compliance with this section shall state with specificity the facts set forth in the Postal Service's filing that the party disputes and the detailed reasons for the party's conclusions. No issue not related to the conditions for a minor classification change or its effects, and no findings from the recommended decision in the preceding general rate case upon which the Postal Service's filing relies shall be subject to challenge.
- (c) If no party challenges the Postal Service's request within 30 days of the filing of the request, the Commission will issue its recommended decision within 60 days from the date of the request.

Add new: **SUBPART I _ RULES FOR EXPEDITED REVIEW TO ALLOW MARKET TESTS OF RATE OR CLASSIFICATION CHANGES**

§ 3001.121 Applicability.

This subpart applies to cases in which the Postal Service requests that the Commission recommend changes in rates or mail classification preceded by testing in the market in order to develop information necessary to support a permanent change. The Commission shall provide expedited consideration of the requested changes, in accordance with this subpart. With the exception of §3001.31(k), the Rules of General Applicability in Subpart A of this part are applicable to proceedings on requests subject to this subpart. Otherwise, the Commission's rules for permanent changes in rates and classifications shall not apply to expedited review of the market tests.

§ 3001.122 Filing of formal requests and prepared direct evidence.

Whenever the Postal Service determines to request that the Commission submit a recommended decision on changes in rate and classifications preceded by testing in the market, the Postal Service shall file with the Commission a formal request for a recommended decision. Requests and written direct testimony shall be filed in accordance with this subpart, and §§ 3001.9 to 3001.11, and 3001.31(a)-(j). Together with its request, the Postal Service shall file all the material on which it relies to support its proposal. This material shall include the following:

- (a) A description of the proposed classification, including proposed domestic mail classification schedule language and rate schedules, an explanation with documentation of the development of the proposed rates, and an explanation of how the proposal complies with the relevant policies of the Act.
- (b) A description of the limited nature of the scope, scale, and duration of the market test.
- (c) A plan for testing the proposal in the market, including a plan for gathering the data needed to support a permanent change. Either the plan shall provide for periodic reporting of test data, or, if periodic reporting would be harmful to the purposes of the test, such as by revealing information that might encourage competitors or mailers to take actions that would affect the test results, the plan may provide for presentation of the test data as part of the subsequent filing of data supporting a permanent change.

§ 3001.123 **Procedural guidelines**

- (a) *Inquiry on the record.* Within 5 days of receipt of the request, the Commission shall issue a notice of proceeding and permit intervention pursuant to applicable rules (§§ 3001.17 and 3001.20). The Commission will conduct an inquiry on the record, reviewing the submission to determine whether:
 - (1) The request complies with the requirements of this subpart and with the policies of the Act.
 - (2) Testing of the proposal is likely to produce information that will enhance the quality of the record and the opportunity to evaluate the proposed change.
 - (3) The test plan is likely to produce data needed to support a permanent change.
 - (4) The test can be conducted without making undue or unreasonable discrimination among mailers or granting any undue or unreasonable preference to any mailer or group of mailers.
 - (5) The test can be conducted so as to avoid unnecessary or unreasonable harm to competitors.

- (b) *“Yes” or “no” determination.* The Commission will determine, based on the above criteria, only whether to recommend or not recommend the Postal Service's proposed market test, without entertaining possible modifications.
- (c) *Scope and timing of recommended decision.* The Commission will issue a recommended decision either approving or not approving the test as requested by the Postal Service within 60 days of the filing of the Postal Service's request. The Commission's recommended decision will include a complete explanation of its reasons.

§ 3001.124 Suspension, and continuation or termination of proceeding.

Following its recommended decision on the test, the Commission will suspend the proceeding until further notice from the Postal Service. The Postal Service will, at any time during the pendency of the test that it deems appropriate, notify the Commission of its intention either to maintain, revise, or withdraw its proposal based on the Postal Service's evaluation of the test. If the Postal Service intends to maintain or revise its proposal, it will file with the Commission the data necessary to support a permanent change. The Commission will proceed in accordance with the appropriate procedures and time limits for requests for permanent changes as of the date of the Postal Service's filing for a permanent change.

Add new: SUBPART J _ RULES FOR EXPEDITED REVIEW OF PROVISIONAL SERVICE CHANGES

§ 3001.131 Applicability.

The rules in this subpart apply to cases in which the Postal Service requests that the Commission recommend changes in rates or mail classification which supplement, but do not alter, existing classification and rates, and that the changes be made provisionally. In such cases, the Commission shall provide expedited consideration of the requested changes in accordance with this subpart, rather than in accordance with the rules for permanent changes.

§ 3001.132 Filing of formal requests and prepared direct evidence.

Requests and written direct testimony shall be filed in accordance with this subpart and §§ 3001.9 to 3001.11, § 3001.31(a)-(j). Together with its request, the Postal Service

shall file all the material on which it relies to support its proposal. This material shall include at least the following:

- (a) A description of the proposed classification, including proposed domestic mail classification schedule language and rate schedules; an explanation and documentation of the development of the proposed rates, which may encompass a range of rates; and an explanation of how the proposal complies with the relevant policies of the Act.
- (b) An ending date, far enough into the future to permit further review as provided for below, including any reconsideration by the Commission, final decision by the Governors, and court appeals.
- (c) An estimate of the effect of the proposal on overall revenues and costs.

§ 3001.133 **Procedural guidelines**

- (a) *Limited inquiry on the record.* Within 5 days of receipt of the request, the Commission shall issue a notice of proceeding and permit intervention pursuant to applicable rules (§§ 3001.17 and 3001.20). The Commission will conduct an inquiry on the record, limited to a determination whether:
 - (1) The request complies with the requirements of this subpart and with the policies of the Act.
 - (2) The proposal is likely to have material adverse effect on overall revenue and costs during the provisional period.
 - (3) The proposal will pose unnecessary or unreasonable harm to competitors.
- (b) *“Yes” or “no” determination.* The Commission will determine, based on the above criteria, only whether to recommend or not recommend the Postal Service's proposal, without entertaining possible modifications.
- (c) *Scope and timing of recommended decision.* The Commission will issue a recommended decision either approving or not approving the proposal as requested by the Postal Service within 90 days of the filing of the Postal Service's request. The Commission's recommended decision will include a complete explanation of its reasons.

- (d) *Basis and timing of recommended decision.* If the Commission finds that the request complies with the applicable requirements and that the proposal is likely neither to have material adverse effects on overall revenue and costs nor to pose unnecessary or unreasonable harm to competitors, it shall recommend the service as a provisional service under the terms and conditions proposed by the Postal Service. If the Commission finds to the contrary, it shall not recommend the service. In either case, the Commission shall issue its recommended decision within 90 days of the filing of the Postal Service's request and shall fully explain the reasons for its recommended decision.

§ 3001.134 **Continuation or termination of proceeding.**

The Postal Service will, sufficiently before the ending date of the provisional service, notify the Commission of its intention either to maintain, revise, or withdraw its proposal based on the Postal Service's experience with the provisional service. If the Postal Service intends to maintain or revise its proposal, it will file with the Commission the data necessary to support a permanent change. The Postal Service may choose to use a multi-year test period to support its filing, as provided for in Subpart K. The Commission will proceed in accordance with the appropriate procedures and time limits for requests for permanent changes as of the date of the Postal Service's filing for a permanent change.

Add new: **SUBPART K _ RULES FOR MULTI-YEAR TEST PERIODS**

§ 3001.141 **Use of multi-year test period.**

The rules in this subpart apply when the Postal Service requests a new mail classification and attendant rates which, in the judgment of the Postal Service, will require more than one or two years for costs and volumes to become representative. When the Postal Service uses a multi-year test period in its request for a new service, the Commission's consideration of the requested changes will reflect such a test period.

§ 3001.142 **Filing of formal request and prepared direct evidence.**

In a request for a new service, the Postal Service may choose a multi-year test period, notwithstanding the general test year requirement in rule 54(f)(2). If the Postal

Service chooses a multi-year test period, the request and accompanying direct evidence should fully define the multi-year test period selected, present the reasons the Postal Service finds this period to be appropriate, and explain its multi-year plan for achieving an appropriate contribution to institutional costs by the end of the period selected. Estimated costs, revenues, and volumes should be presented for the entire test period.

Proposed DMCS Language:

CLASSIFICATION SCHEDULE 600 _ NEGOTIATED SERVICE AGREEMENTS

600.01 Description

600.010 Negotiated Service Agreement (NSA) service is a mail service that is available only pursuant to a negotiated service agreement between the Postal Service and a mailer meeting the requirements in 600.020. The Postal Service provides NSA service, on a mailer-specific basis, pursuant to the terms and conditions stipulated in a particular negotiated service agreement.

600.02 Qualifying Mailers

600.020 To qualify for NSA service, a mailer must be independently capable, on an annualized basis, of either: (1) tendering to the Postal Service at least five million pieces of its own mail of the type covered by the NSA; or (2) paying at least two million dollars in postage to the Postal Service for delivery of its mail of the type covered by the NSA.

600.03 NSAs

600.030 Provisions in All NSAs

Each NSA must set forth the following:

- a. The type of mail to be tendered by the mailer.
- b. Weight and size limits.
- c. The services to be provided by the Postal Service, including any speed-of-delivery targets.
- d. Postage and method of payment.
- e. Preparation requirements.
- f. Makeup requirements.

- g. The destination area or areas (e.g., nationwide, local, BMC service area, etc.).
- h. Minimum volume commitments for each service.
- i. The term of the agreement, including any renewal options.
- j. The location or locations at which the mailer is required to tender its items to the Postal Service.
- k. Any other obligations of either party.

600.04 Contribution to Institutional Cost Recovery

600.040 A NSA shall not be implemented unless the contribution to institutional cost recovery with the NSA is greater than could be realized without the NSA.

600.041 In addition to covering the costs estimated to be caused by provision of the service, the postage submitted for mail entered pursuant to each NSA shall contribute a reasonable amount towards the recovery of the Postal Service's institutional costs. As long as the NSA conforms to § 600.040, it is presumed for purposes of this section to contribute a reasonable amount towards the recovery of the Postal Service's institutional costs. In addition, any contribution to institutional cost recovery equal to or in excess of 10 percent of the costs estimated to be caused by the service is conclusively determined to be reasonable for purposes of this section.

600.05 Availability to Other Qualifying Mailers

600.050 After an NSA has been implemented by the Postal Service, as long as it remains in effect, similarly situated mailers who believe that they are in a position to add equivalent value to the postal system if the NSA rate or rates were available to them under the same terms and conditions may file an application with the Postal Service. If the Postal Service approves the mailer's application, an NSA shall be executed between that mailer and the Postal Service for carriage of mail at the rate or rates already recommended by the Commission and placed into effect by the Governors in the context of the existing NSA. A copy of each such new NSA will be filed with the docket section of the Commission for public inspection.

Proposed Rules.

Add new: **SUBPART L _ NEGOTIATED SERVICE AGREEMENTS**

§ 3001.151 **Applicability.**

The rules in this subpart govern the procedure with regard to requests by the Postal Service for a recommended decision on a negotiated service agreement (NSA). The Rules of General Applicability in Subpart A of the part are also applicable to proceedings on such requests.

§ 3001.152 **Proceedings**

- (a) After the Postal Service signs a tentative NSA with a mailer, the Postal Service shall file a copy of the negotiated agreement with the Commission, along with a request for a recommended decision. Within 5 days of receipt of the request, the Commission shall issue a notice of proceeding and permit intervention pursuant to applicable rules (§§ 3001.17 and 3001.20).
- (b) With every such request for a recommended decision, the Postal Service shall provide (in addition to a copy of the tentative NSA) the following information:
 - (1) Mail volumes to be expected from the mailer over the period covered by the contract if the contract is not implemented, as well as the costs and revenues associated with those volumes; and
 - (2) Mail volumes to be expected from the mailer over the period covered by the contract if the contract is implemented, as well as the costs and revenues associated with those volumes; and
 - (3) All materials necessary to support, in a reasonable fashion, the estimates provided in response to paragraphs (1) and (2); and
 - (4) Based on the information provided in response to paragraphs (1), (2), and (3), an identification of the approximate net contribution towards recovering the institutional costs of the Postal Service to be expected if the contract is implemented.
- (c) The Commission shall issue a recommended decision either recommending that the tentative NSA be placed into effect as submitted, or recommending that the tentative NSA not be placed into effect as submitted. The recommended

decision shall be issued within 60 days of the filing of the request for a recommended decision by the Postal Service. If it is established that the tentative NSA will provide institutional cost contribution equal to or in excess of the percentage (of costs estimated to be caused by the service) currently specified in the DMCS, no further inquiry into the adequacy of institutional cost contribution is necessary.

- (d) If no request for a hearing on the matter is received by the Commission from the Postal Service, a user of the mail, or the Office of the Consumer Advocate within 10 days after publication of the notice in the Federal Register, the Commission may base its recommended decision on the information furnished with the request, or may request additional material. If a timely request for a hearing is filed, the Commission shall promptly schedule a prehearing conference to be conducted pursuant to § 3001.24. At such a prehearing conference, the issues to be addressed during the hearing will be identified, and procedures will be established to allow timely transmission by the Commission of the recommended decision.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in Docket No. R94-1.

Daniel J. Foucheaux, Jr.

475 L'Enfant Plaza West, S.W.
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April 10, 1995